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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,062	09/30/2003	Alfred R. DeAngelis	5164	5844

7590. 05/04/2005

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EXAMINER

PATEL, VINOD D

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/675,062	DEANGELIS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Vinod D. Patel	3742	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED OFFICE ACTION**

### **INTRODUCTION**

1. This application/control number 10/675,062 has been examined. This is final action on the merits of the claimed invention. The application has claims 1-26 pending.

#### ***Response to Amendment***

2. The declaration filed on 2/17/05 under 37 CFR 1.131 has been considered but is ineffective to overcome the Sullivan (US6768086) reference.

3. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Sullivan (US6768086) reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). Declaration does not disclose the conductive resistance pathway and the temperature dependent variable resistance pathway have different routes in the flexible planar body as claimed in the present application and disclosed in the Sullivan (US6768086) reference.

4. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Sullivan (US6768086) reference to either a constructive reduction to practice or an actual reduction to practice. Declaration does not disclose the conductive resistance pathway and the temperature dependent variable resistance pathway have different routes in the flexible planar body as claimed in the present application and disclosed in the Sullivan (US6768086) reference.

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5. The evidence submitted is insufficient to establish applicant's alleged actual reduction to practice of the invention in this country or a NAFTA or WTO member country after the effective date of the Sullivan (US6768086) reference. Declaration does not disclose the conductive resistance pathway and the temperature dependent variable resistance pathway have different routes in the flexible planar body as claimed in the present application and disclosed in the Sullivan (US6768086) reference.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-5, 11-18 and 24-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Sullivan (US6768086).

Sullivan (Fig. 1-6) discloses (warming blanket having fabric) a flexible heater (20) comprising: a flexible planar body (22) having a conductive resistance pathway (24) including at least one conductive resistance flexible strand of material, and a temperature dependent variable resistance pathway (28) having at least one temperature dependent variable resistance flexible strand of material, wherein the conductive resistance pathway and the temperature dependent variable resistance pathway have different routes in the flexible planar body as shown in the Figure 3.

The flexible heater according to Figure 4, the conductive resistance pathway (324) includes a plurality of conductive resistance flexible strands of material.

The flexible heater according Figure 4, wherein the conductive resistance pathway (324) further includes a supply bus (302) flexible strand of material electrically connected with the conductive resistance flexible strands of material.

The flexible heater according to Figure 4, wherein the conductive resistance pathway further includes a first supply bus (302) flexible strand of material and a second supply bus (304) flexible strand of material, and where in the conductive resistance (324) flexible strands of material are electrically connected in parallel between the first supply bus flexible strand of material and the second supply bus flexible strand of material.

The flexible heater wherein the temperature dependent variable resistance flexible strand of material has a positive coefficient of temperature to resistance (Abstract).

The flexible heater (warming blanket fabric) body further includes a plurality of non-conductive flexible strands of material of the flexible planar body are interlaced.

The flexible heater according to the Figures 3-5, the conductive resistance pathway crosses the temperature resistance dependent variable resistance pathway in at least one crossing location, wherein the conductive resistance pathway crosses the temperature resistance dependent variable resistance pathway in about a substantially perpendicular direction.

The flexible heater (warming blanket fabric) wherein the conductive resistance flexible strand of material comprises a conducting resistance yarn.

The flexible heater wherein the conductive resistance pathway includes a plurality of conductive resistance yarns.

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The flexible heater wherein the conductive resistance pathway further includes a first and a second supply bus yarn, and where in the conductive resistance yarns are electrically connected in parallel between the first supply bus yarn and the second supply bus yarn.

The flexible heater wherein the temperature dependent variable resistance flexible strand of material comprises a temperature dependent variable resistance yarn.

The flexible heater wherein the temperature dependent variable resistance yarn has a positive coefficient of temperature to resistance.

The flexible heater (Figure 3-5) wherein the temperature dependent variable resistance pathway further includes a first connection bus yarn and a second connection bus yarn, and wherein the temperature dependent variable resistance yarns are electrically connected in series by the first connection bus yarn and the second connection bps yarn.

The flexible heater (Figure 3-5) wherein the flexible body further comprises a plurality of non-conductive yarns.

The flexible heater, wherein the plurality of non-conductive yarns of the flexible planar body are woven together.

The flexible heater (Figure 3-5) wherein the conductive resistance pathway crosses the temperature resistance dependent variable resistance pathway in at least one crossing location, wherein the conductive resistance pathway crosses the temperature resistance dependent variable resistance pathway in about a substantially perpendicular direction.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6 & 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan (US6768086) as applied to claim 1 above, and further in view of Kochman (US6713733).

Sullivan does disclose a flexible heater having the temperature variable resistance flexible strand of material having a positive coefficient of temperature to resistance but does not disclose a flexible heater having the temperature variable resistance flexible strand of material having a negative coefficient of temperature to resistance.

Kochman discloses a flexible heater (column 4, lines 19-28) wherein the temperature dependent variable resistance flexible strand of material has the temperature variable resistance flexible strand of material having a negative coefficient of temperature to resistance to detect local over heating through the entire length of the heating element or a positive coefficient of temperature to resistance to provide precise temperature control of the heating system to provide a high level of safety, minimizing the possibility of fire hazard.

It would have been obvious to use the temperature variable resistance flexible strand of material having a negative coefficient of temperature to resistance as taught by the Kochman for the flexible heater of Sullivan to detect local over heating through entire length of the heating element to provide precise temperature control of the heating system and a high level of safety, minimizing the possibility of fire hazard.

10. Claims 7-10 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan (US6768086).

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Sullivan discloses a flexible heater comprising the temperature variable resistance flexible strand of material (28, 328, 428) as shown in the Figure 3,4 and 5 connected to connection buses (212, 312, 412) but does not disclose explicitly it is made of single or plurality of temperature dependent variable resistance strands of material are electrically connected in series.

Sullivan discloses the claimed invention except for plurality of temperature dependent variable resistance strands of material are electrically connected in series. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of temperature dependent variable resistance strands of material electrically connected in series, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Sullivan discloses the claimed invention except for plurality of temperature dependent variable resistance strands of material are electrically connected in series. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of temperature dependent variable resistance strands of material electrically connected in series, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO



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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinod D. Patel whose telephone number is 703-308-5227. The examiner can normally be reached on 7.30 A.M. TO 4.00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 703-305-5766. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VP

  
Vinod Patel  
Patent Examiner  
Art Unit 3742

  
ROBIN O. EVANS  
PRIMARY EXAMINER  
5/2/05